

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEREK NASH,

Petitioner,

Case Number: 2:06-CV-10435

v.

HON. LAWRENCE P. ZATKOFF

SUSAN DAVIS,

Respondent.

/

ORDER DENYING CERTIFICATE OF APPEALABILITY AND
REQUEST TO PROCEED IN FORMA PAUPERIS

This matter comes before the Court on Petitioner's Motion for a Certificate of Appealability and his Application to Proceed *In Forma Pauperis* on Appeal. "In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless" a certificate of appealability is issued under 28 U.S.C. § 2253(c). FED. R. APP. P. 22(b)(1). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make such a substantial showing, a petitioner must show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Petitioner raised two primary issues in his petition for habeas corpus:

1. Denial of his right to introduce evidence in support of his defense and to impeach the credibility of the prosecution's witnesses and thus, a denial of a fair trial; and
2. Insufficient evidence to support a conviction.

The Court has reviewed each issue as well as the supporting materials. For the reasons stated in the Court's October 29, 2007, Opinion and Order, a certificate of appealability is DENIED on each issue presented because Petitioner cannot make a substantial showing of a denial of a constitutional right on either issue. The Court will also deny Petitioner leave to appeal *in forma pauperis*, because the appeal would be frivolous. *Dell v. Straub*, 194 F. Supp. 2d 629, 659 (E.D. Mich. 2002).

Accordingly, IT IS ORDERED that no certificate of appealability shall issue in this matter.

IT IS FURTHER ORDERED that Petitioner's Application to Proceed *In Forma Pauperis* on Appeal is DENIED.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: November 29, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on November 29, 2007.

s/Marie E. Verlinde
Case Manager
(810) 984-3290